

REMARKS

The Office Action dated September 9, 2004 has been received and reviewed by the applicant. Claims 1-3 are in the application. Claims 1-3 stand rejected. Claim 1 is amended. Reconsideration is respectfully requested.

Claims 1-3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens, U.S. Patent No. 5,192,990 in view of Matsumoto et al., U.S. Patent No. 4,878,120. The entirety of the rejection is not repeated herein for brevity. It is pointed out, however, that Matsumoto et al. teach using ITO in the image area of the sensor where incident light is being captured and converted to charge packets representing a scene. Its function is to enable more signal in the image area. In contrast, the claimed invention uses a transparent gate in the output structure that is used in transferring or transporting signal from the image sensor. Therefore, Matsumoto et al. teach the opposite of the claimed invention which is well settled by case law precedent to defeat a claim of obviousness. This was articulated in *In re Gurley* 27 F.3d 551, 31 USPQ2d 1130 (Fed. Cir. 1994) where it states:

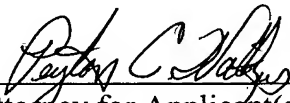
A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

In this regard, a declaration is included herewith for clearly stating that a person of ordinary skill in the art (David N. Nichols) would not follow the path of Matsumoto et al. and would in fact, upon reading Matsumoto et al, be discouraged from doing what is in the claimed invention. Therefore, it is respectfully submitted that the claims are neither anticipated nor obvious in light of the prior art and the rejection should be withdrawn in light of the above discussion.

Should the Examiner consider that additional amendments are necessary to place the application in condition for allowance, the favor is requested of a telephone call to the undersigned counsel for the purpose of discussing such amendments.

For the reasons set forth above, it is believed that the application is in condition for allowance. Accordingly, reconsideration and favorable action are respectfully solicited.

Respectfully submitted,



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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.

Amendments to the Drawings:

Formal drawings are submitted herewith under Separate Letter to the Draftsperson. For the convenience of the Examiner, a copy of the formal drawings are also attached with this amendment.